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FROM: KATHRYN LAPPEGARD

RE: U.S. PATENT APPLICATION SERIAL NO. 10/080,114
ATTORNEY DOCKET NO. 1301

DATE: 04/13/04

FAX NUMBER: (703) 872-9306

NUMBER OF PAGES FOLLOWING THIS SHEET: 5

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Transmittal Form (1 Page)
Response to Restriction Requirement (4 Pages)

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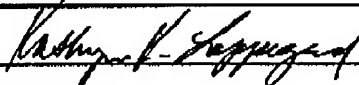
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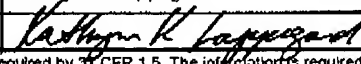
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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	10/080,114	
	Filing Date	02/21/2002	
	First Named Inventor	Kanwarpal S. Dhugga	
	Art Unit	1638	
	Examiner Name	Ibrahim, Medina Ahmed	
Total Number of Pages in This Submission	5	Attorney Docket Number	1301

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Response to Restriction Requirement
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Kathryn K. Lappegard
Signature	
Date	April 13, 2004

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Signature		Date	April 13, 2004

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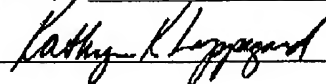
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Name (Type or Print) Kathryn K. Lappegard

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Date April 13, 2004

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor : Kanwarpal S. Dhugga
Application Number : 10/080,114
Filing Date : 02/21/2002
Title : Manipulation of Sucrose Synthase Genes to
Improve Stalk and Grain Quality

Group/Art Unit : 1638
Examiner : Ibrahim, Medina Ahmed

Attorney Docket Number : 1301

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT
MAILED MARCH 23, 2004

Dear Madam:

In response to the Restriction Requirement dated March 23, 2004, please
consider the following remarks on the above-identified application.

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Group Art Unit: 1638

REMARKS

This paper is being submitted in response to the Restriction Requirement mailed March 23, 2003, in connection with the above-identified application.

The Examiner has restricted this application to one of the following inventions under 35 U.S.C. § 121:

- I. Claims 1-11 and 13-21, drawn to an isolated polynucleotide, recombinant expression cassette, and plant/plant cell/seed, and a plant transformation method, classified in class 800, subclass 278.
- II. Claim 12, drawn to an isolated protein, classified in class 530, subclass 370.

The Applicants hereby provisionally elect, **with traverse**, those claims to "Invention I, Claims 1-11 and 13-21, drawn to an isolated polynucleotide, recombinant expression cassette, and plant/plant cell/seed, and a plant transformation method". This election is made with traverse and without prejudice to Applicants' option to file divisional applications to the non-elected claims. The right to pursue examination of the non-elected claims in continuation or divisional applications is reserved.

The Examiner asserts that Inventions I and II are distinct and have therefore acquired a separate status in the art as shown by the different classifications. The Examiner states that Inventions I and II are distinct from each other in that "Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another or materially different process (MPEP § 806.05(f))". In the instant case, the Examiner asserts that "the protein of Group I, can be prepared by another and materially different process other than that of Group I, such as chemical synthesis". Additionally, the Examiner states that because of the different classifications of Inventions I and II, coexamination of Inventions I and II would present a search burden upon the Office.

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The Applicants respectfully traverse. These groups can clearly be used together. Claims 1-11 and 13-21 (Invention I) are directed to an isolated polynucleotide, recombinant expression cassette, and plant/plant cell/seed, and a plant transformation method all of which contain polynucleotide and polypeptide sequences with sucrose synthase activity. Claim 12 (Invention II) is simply to a protein consisting of the same sequences and having the same function and effect. It is also submitted that claim 12 (Invention II) is directed to an isolated protein that can be used with the claims of Invention I.

Applicants respectfully assert that the Inventions I and II are related and have been disclosed as capable of use together. Further, the modes of operation, function, or effects have been shown to be related as evidenced above. The requirement of MPEP §§ 806.04 and 808.01 for independent, unrelated inventions have not been met and Claims 1-21 should not be held to be independent inventions.

MPEP § 808.01 states that inventions are independent "where they are not connected in design, operation, or effect under the disclosure of the particular application under consideration...." The disclosure of the present invention clearly connects the inventions of Inventions I and II. Inventions I and II are connected by claim 12 (Invention II) which describes an isolated protein wherein at least one polypeptide is encoded by a member of claim 1 (Invention I).

Further, the specification on page 11, lines 4-8 reads: "The polynucleotide sequences of SEQ ID. NOS. 1 and 11, and polypeptide sequences of SEQ ID. NOS. 2 and 12 [Invention I], represent a polynucleotide and polypeptide of the present invention. A nucleic acid of the present invention comprises a polynucleotide of the present invention. A protein of the present invention comprises a polypeptide of the present invention [Invention II]."

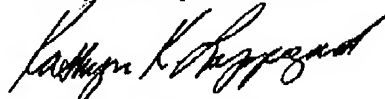
In light of these remarks, the Applicants respectfully request that all of the claims (Inventions I and II) be considered a single invention. Applicants believe that the search and consideration of the protein of Invention II as claimed in the different

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composition claim of the present application is not burdensome to the Examiner. Applicants respectfully request that the current Restriction Requirement be reconsidered and withdrawn.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-1852.

Respectfully submitted,



Kathryn Lappegard
Agent for Applicant(s)
Registration No. 46,857

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